

Part 1970 - ENVIRONMENTAL

Subpart E - Environmental Justice

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Part 1970 - ENVIRONMENTAL

Subpart E - Environmental Justice

§ 1970.201 Purpose.

This subpart provides guidance to staff of Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service (collectively referred to as the "Agency") regarding the implementation and integration of environmental justice considerations into all Agency programs' environmental reviews as part of the public involvement process. Effective environmental justice review is necessary to comply with various statutes and Executive Orders, to strengthen Agency partnerships, and to foster cooperation and coordination between all peoples of the United States of America in connection with Agency program activities.

§ 1970.202 Authority.

(a) Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, issued on February 11, 1994, requires each Federal agency to identify and address disproportionately high and adverse human health or environmental effects, including social and economic effects, of its programs, policies, and activities on minority and low-income populations. A separate memorandum accompanying the Executive Order directed federal agencies to analyze the environmental effects of federal actions, including effects on minority communities and low-income communities, when such analysis is required by the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq. In addition, the memorandum instructed each federal agency to provide opportunities for community input into the NEPA process, including identification of potential effects and mitigation measures in consultation with affected communities and improvements in accessing meetings, crucial documents, and notices.

(b) NEPA, 42 U.S.C. §§ 4321 et seq., requires federal agencies to analyze and document the potential environmental impacts of major federal actions significantly affecting the quality of the human environment.

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RD Instruction 1970-E
§ 1970.202 (Con.)

(c) Civil Rights Act of 1964, Title VI, requires each federal agency to ensure that no person, on the basis of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance.

(d) Departmental Regulation 5600-002, Environmental Justice, issued December 15, 1997.

(e) Departmental Regulation 4300-4, Civil Rights Impact Analysis, issued May 30, 2003.

(f) RD Instruction 2006-P, Civil Rights Impact Analysis, issued on September 18, 2002. <http://www.rurdev.usda.gov/regs/regs/pdf/2006p.pdf>

§ 1970.203 Policy. The Agency will:

(a) Incorporate environmental justice (EJ) principles into Agency programs, activities, and services through existing requirements, primarily NEPA and Title VI of the Civil Rights Act of 1964. The Agency, to the greatest extent practicable, will consider environmental justice principles in its decision-making using its existing NEPA environmental review and Civil Rights Impact Analysis processes.

(b) This guidance is not intended to change the requirements concerning civil rights impact analyses for any Agency administrative actions. The staff instructions in 1970-E are provided to implement the Agency's civil rights policies and regulations concerning environmental justice only as they pertain to NEPA.

(c) Agency programs that have the potential for a disproportionately high and adverse effect on human health or the environment will include explicit consideration of their effects on minority and low-income populations and the documentation will be included within the NEPA documents in the file. Single Family Housing programs grants and/or loans (direct or guaranteed) and servicing actions (transfer, assumption, subordination, etc.) are exempt from such reviews unless concerns of environmental justice have been identified or an environmental justice complaint has been made.

§ 1970.204 Responsible parties.

(a) Administrator. The Administrator has the responsibility to ensure implementation within their respective program areas.

§ 1970.204 (Con.)

(b) Environmental Staff. At both the National and State Office levels, the Environmental Staff will provide guidance and training on this subpart, as well as provide oversight during review of NEPA documents and management control reviews.

(c) Certifying Official. For most loan and grant approvals, the Certifying Official signing Form RD 2006-38, "Rural Development Environmental Justice (EJ) and Civil Rights Impact Analyses (CRIA) Certification" will be the loan processing official. For Electric and Telecommunications Programs, the Certifying Official will be the Assistant Administrator, or official designated to certify on their behalf.

(d) State Civil Rights Manager/Coordinator. Provides guidance at the State Office level to the Certifying Official and other field staff as needed.

(e) State Director. Within a State Office's jurisdiction, the State Director will ensure that minorities and low-income persons/communities have equal access to NEPA public information and are consulted if a proposal is likely to result in disproportionately high and adverse impacts.

§ 1970.205 Definitions

Adverse effects. The totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects.

Agency. Rural Development, Rural Housing Service, Rural Business-Cooperative Service, or Rural Utilities Service, collectively or individually, as appropriate.

Certifying official. The Agency employee completing and signing Form RD 2006-38.

Disproportionately high and adverse effect. An adverse effect that is predominately borne by a minority population and/or a low-income population, or will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

Low-income community/population. Any readily identifiable group of low-income persons who live in geographic proximity and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed Agency program, policy, or action.

Low-income person. A person whose median household income is at or below the Department of Health and Human Services poverty guidelines.

Minority community/population. Any readily identifiable groups of minority persons who live in geographic proximity and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed Agency program, policy, or action.

Minority person. A person who is:

- (1) African-American or Black (a person having origins in any of the black racial groups of Africa);
- (2) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
- (3) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);
- (4) American Indian and Alaskan Native (a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition); or
- (5) Native Hawaiian (a person having origins in any of the indigenous Polynesian people of the Hawaiian Islands).

§ 1970.206 Public involvement and access to public information.

(a) The Agency will inform prospective applicants, borrowers, guaranteed lenders, intermediaries and funding partners about Agency requirements for compliance with the requirements of this subpart. Applicants for financial assistance will be advised to incorporate all reasonable means to avoid or minimize potentially high and adverse impacts to minority communities and low-income communities within the proposed action before submission of an application to the Agency.

§ 1970.206 (Con.)

(b) The Agency will provide meaningful opportunities for public involvement by members of minority and low-income populations during the development of environmental review documents that include identification of potential effects, alternatives (if necessary), and mitigation measures to reduce disproportionate effects on minority and low-income populations. This may require special outreach efforts be used prior to approving the proposal.

(1) Certifying Officials will develop and maintain a listing of organizations, such as churches, social groups, non-profit organizations, or other groups whose members are minority or low-income populations or who support such populations. When Agency staff meets with such groups for any purpose, those meetings can provide a forum for exchanging information on programs and specific proposals that may be of interest to particular populations.

(2) When Agency personnel change positions, such records should be passed on to assist new personnel in knowing who to contact for outreach and public comment.

(c) In addition, the Agency must ensure that minority and low-income communities have adequate access to any public information resulting from NEPA reviews such as public notices. If the affected area is largely non-English speaking or bilingual, public notices should be additionally placed in publications in other appropriate languages or published in a bilingual format.

(d) Whenever environmental justice concerns are raised by the public, those concerns received must be included in, and addressed by the Agency within the NEPA review documents. As needed, consultation will occur with other agencies or experts in a particular field to properly analyze those concerns. Any consultation and recommendations received by the Agency must be made a part of the official record and considered as loan/grant conditions and potential NEPA mitigation measures.

§ 1970.207 Environmental Justice (EJ) Reviews and Certification.

(a) Agency staff processing or reviewing loans or grants will ensure that an EJ review was conducted for all programs to determine whether proposed financial assistance by the Agency would have a

disproportionately high and adverse human health or environmental effect on minority or low-income populations. Exhibit A provides a flowchart of the steps involved and Exhibit B answers commonly asked questions. The only exceptions for completing an EJ analysis are:

- (1) Individual Single Family Housing grants and/or loans (direct or guaranteed); and
- (2) Servicing actions (transfer, assumption, subordination, etc.); unless
- (3) Concerns of environmental justice have been identified or an environmental justice complaint has been made.

(b) The Certifying Official will complete Form RD 2006-38 to assure that the major civil rights impacts of proposed actions are identified and the potential for negative effects are addressed before approval and implementation of proposals for financial assistance from the Agency to fulfill compliance with E.O. 12898, RD Instruction 2006-P, and Departmental Regulation 5600-002.

- (1) Form RD 2006-38 can be found on the Agency Web site at <http://www.rurdev.usda.gov/regs/formstoc.html>.

(2) When conducting EJ reviews, the following information should be considered where relevant, appropriate, or practical:

- (i) Identify any disproportionately high and adverse impacts to human health, ecology, local economies, and cultural, social or historic resources that could occur as a result of the proposed action from the NEPA review or the environmental due diligence report on hazardous materials;
- (ii) Identify the affected population within the proposal's area of potential effect by race, color, or national origin and income level;
- (iii) Document the steps taken to guard against disproportionately high and adverse effects on persons based on race, color, or national origin;
- (iv) Identify both the type and level of public outreach needed to reach low-income or minority populations if the analysis indicates that the proposal would result in a highly disproportionate adverse impact;

§ 1970.207(b) (2) (Con.)

(v) Monitoring any potential disproportionately high and adverse impacts to minority communities or low-income communities during any future Agency servicing visits in the area.

(3) The properly authorized and delegated preparer will submit to the Certifying Official Form RD 2006-38 with attached supporting documentation such as a map of the project area showing the location of minority and low-income populations/communities, delineation of the applicant's proposed project site, and the footprint area of where adverse impacts may occur.

(i) A copy of the Environmental Protection Agency's (EPA) EnviroMapper (<http://www.epa.gov/emefdata/em4ef.home>) environmental justice analysis with the above areas superimposed on it is one form of acceptable documentation.

(ii) Exhibit B provides further information to consider when conducting reviews and analyses.

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Attachments: Exhibits A and B.

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Environmental Justice (EJ) Analysis **- Step-by-Step Flowchart**

STEP 1:

- Determine potential for EJ issues;
- If no adverse environmental or human health effects, proceed with proposal.

STEP 2:

- If adverse environmental or human health effects:
 - Define project area;
 - Conduct demographic analysis including EJ populations.

STEP 3:

- Identify interested and potentially affected parties;
- If required, develop public outreach that identifies interaction with specific EJ communities.

STEP 4:

- Identify potential adverse impacts;
- Map impact footprint;
- Refine demographic/EJ analysis to focus on the project impact area using census data/other data sources;
- If impact is not disproportionately high and adverse, then declare no disproportionate effect.
- If impact is disproportionately high and adverse, then conduct public interaction to confirm and involve the public;
- Identify alternatives or determine mitigation.

STEP 5:

- Document methodology and finding(s):
 - Determine/describe if EJ populations are disproportionately impacted;
 - Document if any EJ complaints have been received;
 - Describe impacts and mitigation in NEPA environmental review document.

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Conducting Environmental Justice (EJ) and Civil Rights Impact Analysis (CRIA)

1. What is environmental justice?

Environmental justice is the fair treatment and meaningful involvement of people of all races, cultures, and incomes, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The goal of environmental justice is for Federal agency decision-makers to identify impacts that are disproportionately high and adverse with respect to minority and low-income populations and identify alternatives that will avoid or mitigate those impacts.

2. Does an EJ and CRIA have to be conducted for each and every grant or loan under all Rural Development programs?

All Agency programs that involve grants, contracts, loans (direct or guaranteed), prepayments, distributions of allocations, or project approvals or disapprovals proposed will require an EJ and CRIA, except Single Family Housing loans (direct or guaranteed) and servicing actions (transfer, assumption, subordination, etc.) unless a civil rights concern with respect to environmental justice has been identified or unless an environmental justice complaint has been made. The analysis must be documented utilizing Form RD 2006-38, "Rural Development Environmental Justice (EJ) and Civil Rights Impact Analysis (CRIA) Certification."

3. How can minority and low-income populations be identified and defined?

Identifying and defining minority and low-income populations for an EJ and CRIA can be achieved in the following ways:

(a) Define the affected area. Delineate the area affected by the proposal. The affected area is defined as the area on which the proposal will or may have an effect. Care should be taken that the geographic area of analysis is chosen so as not to artificially dilute or inflate the affected minority populations. An area analyzed for environmental justice may extend beyond the typical area of potential effect of an environmental review in certain instances where the area may be used for spiritual or subsistence purposes by Native American communities.

(b) Obtain U.S. Bureau of Census demographic data to determine the minority composition of the affected area. A minority population may be defined as any readily identifiable group of minority persons who

live in geographic proximity to the affected area. This definition includes, if circumstances warrant, geographically dispersed or transient persons who will be affected by the proposal. Minority populations often occur in small pockets within a larger community. Ensure that minority populations are not missed because they live within geographic areas that do not align with census data. Some minority populations are transient and may not be accounted for in census data. These communities include seasonal and/or migrant farm workers. Sources that can provide information regarding small pockets of minorities and transient minority populations can be obtained through local churches, state and local colleges, community centers, and expanded public outreach efforts.

(c) Obtain U.S. Bureau of Census demographic data to determine the number of individuals within the affected area whose median household income is at or below the U.S. Department of Health and Human Service's (HHS) poverty guidelines. Low-income populations in an affected area can be identified by using the annual statistical poverty thresholds from the U.S. Census Bureau on Income and Poverty (<http://www.census.gov>). These income data are available in several formats. Local sources of information such as local colleges and local or State departments of economic development can also be used to augment census data.

(d) Use of the Environmental Protection Agency's (EPA's) on-line EnviroMapper (<http://www.epa.gov/emefdata/emf4.home>) can provide access to a wealth of environmental information. It is a powerful tool used to map various types of environmental information, including air emissions, surface water features, toxic releases, hazardous wastes, Superfund Sites, and Environmental Justice Geographic Assessment Information. Selected demographic features that can be accessed within the Environmental Justice Geographic Assessment Tool include, but are not limited to, persons per square mile; per capita income; percent minority; percent below poverty; percent education < 12th grade; percent that speak English well; and percentage of renters. Information can be viewed by adding several features to the map that include major roads, railroads, churches, hospitals, and schools, etc. A geographic area of interest is selected by inserting a zip code to start the map construction. Maps can be generated at the national, state, and county levels and then printed. Visit <http://www.epa.gov/emefdata/em4ef.home> or <http://www.epa.gov/compliance/environmentaljustice/assessment.html> for further information. Typically, census data alone will not be sufficient to identify pockets of minority or low-income populations. A combination of methods should be utilized.

4. In light of environmental justice, what is an adverse effect or impact?

An adverse effect is used to describe the entire compendium of significant individual or cumulative human health or environmental effects that may result from proposal. Examples of adverse effects for environmental justice concerns include, but are not limited to:

- (a) Air, noise, soil, and water pollution or contamination;
- (b) Destruction or disruption of man-made or natural resources;
- (c) Destruction or diminution of aesthetic values;
- (d) Impacts to religious or cultural sites;
- (e) Destruction or disruption of community cohesion or a community's economic vitality (change in land use);
- (f) Displacement of persons, businesses, farms, or nonprofit organizations;
- (g) Increased traffic congestion, isolation, exclusion, or separation of minority or low-income individuals within a community or from the broader community; and
- (h) Denial of, reduction in, or significant delay in the receipt of benefits of RD programs, activities, or services.

Some examples of an adverse effect include:

- (a) Placing a multi-family housing project adjacent to railroad tracks, next to a farm that routinely crop dusts, or within a 100- or 500-year floodplain;
- (b) Placing a community center or health care facility across town away from a minority or low-income population with no accessibility to public transportation;
- (c) Locating a waste water treatment facility or landfill in or near a minority or low-income area;
- (d) Not extending water or sewer lines to a minority or low-income area; and
- (e) Placing a wind turbine, telecommunications tower, or anaerobic digester in a minority or low-income neighborhood.

5. What is a disproportionately high and adverse effect on minority or low-income population?

A disproportionately high and adverse effect is defined as an impact predominately borne by a minority or low-income population, is suffered by the minority and/or low-income population, and is appreciably more severe or greater in magnitude than the adverse effect that would be experienced by the non-minority or non-low-income population.

6. How can disproportionately high and/or adverse environmental effects be determined for environmental justice concerns?

This is usually answered by asking and answering the following questions:

- (a) Is there or will there be a specific or general impact to the natural or physical environment that significantly and adversely impacts an environmental justice population or Native American Tribe?
- (b) Will the environmental effects occur or could they occur within an affected area or a Native American tribal community and result in cumulative or multiple adverse exposures from environmental hazards?

7. How can environmental justice requirements be integrated into the Agency's NEPA environmental review process?

Identifying and defining environmental justice populations in the area of a proposal is the first step to integrating environmental justice requirements into the Agency's environmental review process. The environmental review preparer should ask themselves two questions in making a determination on environmental justice:

- (a) Does the potentially affected area include minority and/or low-income populations?
- (b) Are the environmental impacts likely to fall disproportionately on minority or low-income members of the affected area or Native American tribal resources?

If the answer is "no" to both of these questions, then this is documented on Form RD 2006-38, which will be attached to the environmental review forms.

However, if the answer is "yes" to either, then environmental justice requirements need to be incorporated into the Agency's environmental review documents by identifying resources within the affected area that may be impacted by the proposal.

8. Who should conduct the EJ and CRIA and sign the Certification (Form RD 2006-38)?

In most cases, the person that is processing the grant or loan application is the person:

- (a) most familiar with the community;

(b) responsible for conducting or coordinating the environmental review; and

(c) trained to conduct civil rights compliance reviews. Therefore, the loan processing or servicing official will conduct the analysis and sign the form. The State Civil Rights Manager/Coordinator will monitor and evaluate a sufficient number of EJ/CRIA forms to determine whether they are being properly completed.

9. What factors should be included and where and how should they be documented?

Factors that should be included in an environmental justice analysis include, but are not limited to, the following:

- (a) Demographic factors;
- (b) Socioeconomic factors;
- (c) Human health risk and ecological risk assessments;
- (d) Maps of the affected area showing the location of minority and low-income populations, any existing human health hazards (railroad tracks, waste dumps, treatment facilities, industrial areas, etc.), and location of the proposal; and
- (e) Site and/or design alternatives.

As indicated above, applicable documentation will be attached to Form RD 2006-38, which will then be included with the environmental review documents.

10. What if potential adverse impacts are identified?

The State Civil Rights Manager/Coordinator and the State Environmental Coordinator must be consulted if it is determined that adverse impacts are likely that may have a disproportionately high impact on minority or low-income persons/communities. Agency staff and the applicant must be prepared to consider alternative sites and any other measures that might be available to mitigate the potential impacts on minority or low-income populations. If no alternative sites are available or if there are no reasonable methods of mitigating the impact, the State Civil Rights Manager/Coordinator will consult with the National Office Civil Rights staff before the proposal is approved and Agency any action is implemented. (Note: Even though potential adverse impacts have been identified, it does not necessarily mean that the

project cannot be approved and implemented.) Any mitigation measures should focus on true mitigation of the impact rather than merely shifting the impact from one population to another. In determining whether a mitigation measure or an alternative is practicable, the social, economic (including costs), and environmental effects of avoiding or mitigating the adverse effects should be taken into account. If mitigation measures are required to reduce disproportionately high and adverse effects, a commitment to these measures must be documented in the Finding of No Significant Impact (FONSI) or the Record of Decision (ROD) as well as the Letter of Conditions or Conditional Commitment.

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